

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval to Commit Funds in )  
Excess of \$2,500,000 (excluding )  
customer contributions) for )  
Purchase and Installation of Item )  
Y-49000, Campbell Industrial Park )  
Generating Station and Transmission )  
Additions Project. )

DOCKET NO. 05-0145

ORDER NO. 22244

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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RECEIVED

Filed Jan. 26, 2006  
At 8 o'clock A.M.

Karen Higashi.  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi.

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Order No. 22244

By this Order, the commission grants the motion to intervene filed by LIFE OF THE LAND ("LOL") and the motion to participate filed by SOUTHERN WINE AND SPIRITS OF AMERICA, INC. ("SWSA"), and orders the parties and participant to meet informally to develop the issues, procedures, and schedule with respect to this proceeding.

By an application filed on June 17, 2005,<sup>1</sup> HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") requests, among other things, commission approval to commit approximately \$134,310,260 for Item Y-49000, Campbell Industrial Park Generating Station and Transmission Additions Project ("Proposed Project"), in

<sup>1</sup>Application, Exhibits I - XXI, Verification, and Certificate of Service, filed on June 17, 2005 ("Application").

accordance with Paragraph 2.3.g.2 of the commission's General Order No. 7, Standards for Electric Utility Service in the State of Hawaii ("General Order No. 7").<sup>2</sup>

LOL is a non-profit, Hawaii-based organization whose "members live, work, and recreate in Hawaii."<sup>3</sup> LOL states that it is an "environmental and community action group," formed in 1970, that has approximately 1,000 members who pay annual dues.<sup>4</sup>

SWSA is a privately held Florida corporation that has been duly registered to do business in the State of Hawaii since August 1996. SWSA, one of the State's "largest wine and liquor distributors," has occupied a warehouse located adjacent to the location HECO identified as the site for the Proposed Project since 2001.<sup>5</sup> SWSA stores the following products at its warehouse: non-alcoholic beverages, refrigerated wines and beers, distilled liquor, other alcoholic beverages, and tobacco products. SWSA "has approximately 35 employees who work at the

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<sup>2</sup>HECO served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). Pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, the Consumer Advocate is an *ex officio* party to this proceeding.

<sup>3</sup>LOL's Motion to Intervene and Certificate of Service, filed on July 7, 2005 ("LOL's Motion to Intervene") at 2<sup>nd</sup> page.

<sup>4</sup>LOL's Motion to Intervene, filed on January 6, 2004, in Docket No. 03-0417, at 34<sup>th</sup> page. LOL incorporated by reference the information provided in its motions to intervene filed in Docket Nos. 99-0004, 00-0209, 03-0371, and 03-0417. LOL's Motion to Intervene at 2<sup>nd</sup> page.

<sup>5</sup>SWSA's Motion to Intervene or in the Alternative Participate and Certificate of Service, filed on July 7, 2005 ("SWSA's Motion to Intervene or Participate") at 2-3.

warehouse and has delivery trucks going to and from the warehouse throughout the day.”<sup>6</sup> SWSA states that many customers, vendors, and visitors also frequent the warehouse, which is in operation 24 hours a day, Monday through Friday.

## II.

### Discussion

It is well-established that intervention as a party in a commission proceeding “is not a matter of right but is a matter resting within the sound discretion of the commission.” See In re Application of Hawaiian Elec. Co., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975). HAR § 6-61-55, which governs intervention, requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. Furthermore, HAR § 6-61-55(d) states that “[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.”

### A.

#### LOL’s Motion to Intervene

In its Motion to Intervene, LOL states that the “expenditure of \$135M to build a fossil fuel generator will directly impact LOL and [its] members . . . economically, socially and environmentally.”<sup>7</sup> LOL asserts that renewable

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<sup>6</sup>SWSA’s Motion to Intervene or Participate at 2.

<sup>7</sup>LOL’s Motion to Intervene at 2<sup>nd</sup> page.

distributed generation "should replace the need for central generation, transmission lines, industrialization of the waterfront," and opposes reliance on fossil fuel resources.<sup>8</sup> LOL contends that since it represents environmental interests, its interests are distinct from those assigned to the Consumer Advocate. LOL believes its participation in this proceeding will enable the commission "to get a more complete picture of the environmental, social and economic costs/benefits associated with this project and the alternatives."<sup>9</sup> LOL assures the commission that it will neither unduly broaden the issues nor delay this proceeding.

On July 15, 2005, HECO filed a memorandum in response to LOL's Motion to Intervene, stating that it does not oppose LOL's intervention in this docket, provided that LOL's participation is limited to the issues raised by the Application, LOL is not permitted to expand the scope of the proceeding or delay the proceeding, and LOL is required to comply with HAR, Title 6, Chapter 61, Rules and Practice and Procedure Before the Public Utilities Commission.<sup>10</sup>

The commission recognizes that the addition of fossil fuel-fired energy generation generally raises environmental concerns. The commission understands that HECO will be required to complete an environmental impact statement ("EIS") in

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<sup>8</sup>Id. at 2<sup>nd</sup>, 4<sup>th</sup> pages.

<sup>9</sup>Id. at 3<sup>rd</sup> page.

<sup>10</sup>Memorandum in Response to [LOL's] Motion to Intervene; Affidavit of William A. Bonnet; Affidavit of Thomas W. Williams, Jr.; and Certificate of Service, filed on July 15, 2005.

connection with its request for a public infrastructure map amendment for the Proposed Project with the Department of Planning and Permitting, City and County of Honolulu.<sup>11</sup> While the commission expects that the environmental issues raised in connection with the Proposed Project will be highlighted in the EIS and examined in the Chapter 343, HRS, environmental review process, the commission nonetheless believes it will be helpful to have information relating to environmental matters related to the general issues described in General Order No. 7. Upon consideration of LOL's interest in the environmental impact of the Proposed Project, the commission finds that the allegations raised by LOL in its Motion to Intervene are reasonably pertinent to the matters raised in this docket. Thus, the commission concludes that LOL's Motion to Intervene should be granted, provided that its participation will not broaden the issues or unduly delay the proceedings, and it follows all applicable rules of the commission.

B.

SWSA's Motion to Intervene or Participate

In its Motion to Intervene or Participate, SWSA states that it has a direct and substantial interest in this proceeding because it is located adjacent to the site identified by HECO for its Proposed Project. In addition, SWSA asserts that it "may be affected by [HECO's] proposed improvement of its transmission

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<sup>11</sup>See HECO's Letter dated September 7, 2005 and filed on September 8, 2005, transmitting its Environmental Impact Statement Preparation Notice to the commission.

system through the upgrade of three substations and the construction of a second overhead 138 [kilovolt] transmission line between two of the substations located in Campbell Industrial Park."<sup>12</sup> SWSA also expresses concern that the Proposed Project "may have a detrimental effect on [its] business in the form of health and environmental issues," naming electro magnetic field effects and air and water quality issues, in particular.<sup>13</sup> SWSA states that the Proposed Project may also increase traffic congestion and noise, causing a detrimental and disruptive effect on its business. Finally, as the adjacent landowner to the site for the Proposed Project, SWSA is concerned about the possible effects the Proposed Project will have on its property value.

SWSA contends that none of the existing parties to this docket share the same unique interests, and states that the Consumer Advocate cannot adequately represent it since its interests differ from that of the general public. SWSA suggests that because it has been at its location for close to four (4) years, it "is the only one with the expertise, knowledge, and experience to know how the [P]roposed [P]roject will affect the quality of its products and business."<sup>14</sup> SWSA explains that since the decisions made in this docket may have great impacts on its property, business, and financial investments for many years, it has no other adequate means, but by intervention or

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<sup>12</sup>SWSA's Motion to Intervene or Participate at 3.

<sup>13</sup>Id. at 3.

<sup>14</sup>Id. at 6.

participation, to protect its property, business, and financial interests. SWSA also maintains that it will not unduly broaden the issues or unduly delay the progress of the proceeding.

On July 15, 2005, HECO responded to SWSA's Motion to Intervene or Participate, stating that it opposes SWSA's request to intervene in this proceeding, and that it does not oppose SWSA's request to participate, subject to certain restrictions.<sup>15</sup> HECO asserts that there is no statutory or other mandatory right for SWSA to intervene. It further argues that SWSA's interests are not reasonably pertinent to the primary issues of this proceeding and are not distinct from that of the general public. HECO disputes SWSA's claim that its intervention would assist in the development of a sound record and would not broaden the issues or delay the proceeding. HECO argues that SWSA's request to intervene should be denied, and instead suggests that SWSA be allowed to participate on issues relating to the health, environmental, traffic congestion, and noise effects caused by the Proposed Project on the quality of SWSA's products, employees, vendors, customers, and visitors to its warehouse in Campbell Industrial Park and the value of SWSA's property next to the Proposed Project site.

The commission agrees that SWSA, due to its proximity to the proposed site for the Proposed Project, may experience impacts to its business as a result of the completion of the Proposed Project, as described by HECO in its Application.

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<sup>15</sup>Memorandum in Response to [SWSA's] Motion to Intervene or in the Alternative Participate; Affidavit of Robert Isler; and Certificate of Service, filed on July 15, 2005.



However, the interests and impacts described by SWSA in its Motion to Intervene or Participate are not reasonably pertinent to the issues that the commission must examine in this proceeding. Moreover, the commission believes that the Consumer Advocate, which has been charged with representing all consumer interests before the commission will adequately represent SWSA's interests. Accordingly, the commission will deny SWSA's request to intervene and will grant its request to participate, provided, however, that: (1) its participation will not broaden the issues or unduly delay the proceedings; (2) it follows all applicable rules of the commission; and (3) its participation will be limited to the health, environmental, traffic congestion, and noise effects caused by the Proposed Project on SWSA's products, employees, vendors, customers, and other visitors to SWSA's warehouse adjacent to the site of the Proposed Project and the value of SWSA's property next to the site.

C.

Procedural Order

To assist in the efficient disposition of the instant proceeding, the commission finds it necessary to establish the issues, procedures, and a schedule. Thus, HECO, the Consumer Advocate, LOL, and SWSA should meet informally to determine the issues, procedures, and schedule with respect to this proceeding, to be set forth in a stipulated procedural order that shall be submitted for commission approval within forty-five

(45) days from the date of this order. In the alternative, if the parties and participant are unable to stipulate to such an order, we conclude that each party or participant shall submit a proposed procedural order for the commission's consideration within forty-five (45) days from the date of this order.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. LOL's Motion to Intervene, filed on July 7, 2005, is granted, provided that LOL's participation will not broaden the issues or unduly delay the proceedings, and LOL follows all applicable rules of the commission.

2. SWSA's Motion to Intervene, filed on July 7, 2005 is denied. SWSA's Motion to Participate, filed as an alternative to its Motion to Intervene, is granted, provided that: (1) its participation will not broaden the issues or unduly delay the proceedings; (2) it follows all applicable rules of the commission; and (3) its participation is limited to issues relating to health, environmental, traffic congestion, and noise effects caused by the Proposed Project on SWSA's products, employees, vendors, customers, and visitors to SWSA's warehouse that is adjacent to the site for the Proposed Project and to the value of SWSA's property next to the Proposed Project's site.

3. HECO, the Consumer Advocate, LOL, and SWSA shall meet informally to determine the issues, procedures, and schedule with respect to the instant docket, to be set forth in a

stipulated procedural order. The stipulated procedural order shall be submitted for commission approval within forty-five (45) days from the date of this order. If the parties and participant are unable to stipulate to such an order, each party or participant shall submit its own proposed procedural order for the commission's consideration within forty-five (45) days from the date of this order.

DONE at Honolulu, Hawaii JAN 26 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By (Excused)  
Wayne H. Kimura, Commissioner

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni  
Catherine P. Awakuni  
Commission Counsel

05-0145.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22244 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service  
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Karen Higashi

DATED: JAN 26 2006